

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
REQUEST FOR PROPOSALS: GREENHOUSE GAS MITIGATION STUDY

CONTRACT NO. 2006-026 (RFP)

The Bay Area Air Quality Management District (District) requests proposals for the following purpose according to the terms and conditions attached. In the preparation of this Request for Proposals (RFP) the words "Bidder," "Contractor," and "Consultant" are used interchangeably.

PURPOSE

The overall goal of this study is to provide the Bay Area Air Quality Management District with a comprehensive inventory and evaluation of technologies and processes available for the reduction of greenhouse gas emissions by stationary sources currently subject to the District's permitting requirements. The study will identify additional or alternative processes and technologies that can be implemented to reduce greenhouse gas emissions from stationary sources, and will further evaluate and compare the identified technologies/processes to one another and to the technologies/processes currently in use at stationary sources on the basis of: greenhouse gas emission reduction benefit; capital, installation, implementation, operational and maintenance costs; key uncertainties associated with costs analyzed; challenges to implementation, operation, and maintenance; additional air quality benefits and disbenefits (e.g., increase in other pollutants) for criteria pollutants and toxics; and any other benefits and/or disbenefits to using said technologies or processes.

BIDDERS CONFERENCE - A bidders' conference will be held on May 8, 2006 in the 4th Floor Conference Room at 10:00 A.M. at District headquarters located at 939 Ellis Street, San Francisco, CA 94109. Questions on the content of this RFP should be submitted in writing or e-mail to be received by the close of business May 8, 2006 to:

Alex Ezersky
Principal Air Quality Specialist
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
(415) 749-4650
e-mail: aezersky@baaqmd.gov

TIMELINE (TENTATIVE)

Date	Activity/Product/Report
April 17, 2006	RFP Released
May 8, 2006	Bidders' Conference
May 17, 2006	Proposals Due
May 22, 2006	Interviews, if required
June 2006	Contract Execution
August 28, 2006	Preliminary Report due
September 11, 2006	Comments on Preliminary Report due to Consultant
October 2, 2006	Draft Report due
October 16, 2006	Comments on Draft due to Consultant
October 30, 2006	Final Report due

This schedule is preliminary.

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The following is a list of sections contained in this request for proposals:

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Section II	Work Statement, Deliverables and Tentative Schedule
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Section V	Proposal Evaluation and Contractor Selection Criteria
Section VI	Draft Contract
Section VII	Minority, Women, and Disabled Veteran Business Enterprises

SECTION I: INTRODUCTION AND SOURCE MATERIALS

INTRODUCTION

The Bay Area Air Quality Management District is a regional agency responsible for the protection of the public's health and welfare from airborne pollutants, primarily by promulgating and enforcing regulations and rules to reduce air pollution as provided by the Federal Clean Air Act (42 U.S.C. § 7401 et seq) and the California Clean Air Act (Health & Safety Code § 39000 et seq). The District's jurisdiction encompasses all of seven counties – Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara and Napa, and southern portions of Solano and Sonoma counties. The District is governed by a 22-member Board of Directors. Since 1972, any facility that operates specified stationary air pollution-emitting equipment in the Bay Area, or modifies its existing operation, must apply to the District for a permit.

On June 1, 2005 the Air District Board of Directors adopted a resolution establishing a Climate Protection Program that acknowledges the link between climate protection and existing programs designed to reduce air pollution. Since then District staff has identified a number of initiatives designed to reduce greenhouse gas (GHG) emissions in the Bay Area. As part of its future efforts to address climate change, the District intends to gather information regarding currently available or emerging processes or technologies that could reduce greenhouse gas emissions from stationary sources currently subject to the District's permitting requirements.

SOURCE MATERIALS FOR THE STUDY

(Available for review in the Library of the District, Monday through Friday from 8:30 a.m. to 4:00 p.m., or on web site www.baaqmd.gov)

1. District Rules and Regulations
2. Bay Area 2005 Ozone Strategy
3. District Best Available Control Technology Workbook and Permit Handbook
4. District Board of Directors Resolution on Climate Change, June 1, 2005
5. Additional materials for the study may be provided by District staff directly to the contractor.

SECTION II: WORK STATEMENT, DELIVERABLES AND TENTATIVE SCHEDULE

WORK STATEMENT

The contractor shall identify and evaluate stationary source greenhouse gas (for the purposes of this study defined as carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and black carbon particles originating from fossil fuel combustion) emission reduction technologies, process changes, mitigation measures, or other strategies (hereinafter referred to as "mitigation measures") that can be applied to District permitted sources. The tasks for this work statement are as follows:

- 1.1 Identify and document GHG mitigation measures by industrial sector or permitted source category.
- 1.2 Identify and document GHG mitigation measures as emerging technology, or demonstrated in practice.
- 1.3 Identify and document capital, installation, implementation, operational and maintenance costs associated with GHG mitigation measures.
- 1.4 Identify and document key uncertainties associated with costs analyzed for GHG mitigation measures.
- 1.5 Identify and document challenges to implementation, operation, and maintenance of GHG mitigation measures.
- 1.6 Identify and document GHG emission reduction benefit, for both the greenhouse gas in question and in equivalent CO₂ units (if the greenhouse gas emission reductions are not for carbon dioxide) obtained by implementing GHG mitigation measures, along with any key uncertainties in estimating GHG emission benefit.
- 1.7 Identify and document additional air quality benefits and disbenefits for criteria pollutants and toxic air contaminants achieved by implementing GHG mitigation measures.
- 1.8 Identify and document any other important benefits and/or disbenefits achieved by implementing GHG mitigation measures.
- 1.9 Evaluate, compare, and recommend GHG mitigation measures by sector or source category on the basis of GHG emissions reductions, costs, challenges, air quality benefits and disbenefits, and any other important benefits and disbenefits as identified in 1.4 through 1.9.

DELIVERABLES

1. Preliminary Report Due August 28, 2006

The report will document preliminary findings and provide an explanation of the recommendations. This report will be delivered in writing, electronically, and through informal verbal presentation to District management on the due date.

District staff shall provide comments within two weeks of receipt of the preliminary report.

2. Draft Report and Supporting Files Due October 2, 2006

The deliverables of the study as delineated in the above tasks will be incorporated into a comprehensive report. Ten hard copies and an electronic copy of the draft report will be provided for staff review and comments by the due date.

The contractor will provide the District with electronic copies of all documents, spreadsheets, tables, analyses created for the study and a detailed bibliography citing all references utilized in the course of the study. Supporting files will be delivered electronically to the designated District staff contact by the due date. Documents and graphs shall be provided in Microsoft Word, EXCEL, ACCESS, POWERPOINT for Windows files, or other software as pre-approved by the District. Spreadsheets shall be provided in EXCEL for Windows format, or as otherwise indicated by the District staff contact. Contractor shall ensure that models, spreadsheets, documents, and graphs are compatible with District hardware and existing software programs.

District staff shall provide comments within two weeks of receipt of draft report.

3. Final Report and Supporting Files Due October 30, 2006

A final report incorporating District staff comments will be delivered in writing (35 copies) and electronically on the due date; and possibly through formal verbal presentation to the District Board of Directors as directed by District staff.

The contractor will provide the District with electronic copies of all documents, spreadsheets, tables, analyses created for the study and a detailed bibliography citing all references utilized in the course of the study. Supporting files will be delivered electronically to the designated District staff contact by the due date. Documents and graphs shall be provided in Microsoft Word, EXCEL, ACCESS, POWERPOINT for Windows files, or other software as pre-approved by the District. Spreadsheets shall be provided in EXCEL for Windows format, or as otherwise indicated by the District staff contact. Contractor shall ensure that models, spreadsheets, documents, and graphs are compatible with District hardware and existing software programs.

TENTATIVE SCHEDULE

June 2006	Contract Execution
August 28, 2006	Preliminary Report due
September 11, 2006	Comments on Preliminary Report due to Consultant
October 2, 2006	Draft Report due
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October 30, 2006	Final Report due

This schedule is preliminary.

PROGRESS REPORTS

During the term of the contract, the consultant shall keep the District staff contact apprised of progress on a weekly basis via e-mail on a day to be determined by mutual agreement. These reports shall include progress to date and shall specifically include any requests for action needed by the District on the contractor's behalf. Failure to provide timely progress reports will be deemed grounds for termination of contract.

REQUIRED PRESENTATIONS AND ATTENDANCE AT POLICY MEETINGS

In addition to those presentations listed within the Schedule, attendance may be requested at no more than two subsequent meetings and/or workshops to be held no later than one year after the final delivery date.

DISTRICT STAFF CONTACT:

Alex Ezersky
Principal Air Quality Specialist
Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
(415) 749-4650
e-mail: aezersky@baaqmd.gov

SECTION III: REQUIRED QUALIFICATIONS

Persons or firms submitting a bid on this proposal must be qualified in air quality management consulting and demonstrate experience in the following areas:

- i) air regulatory agency operations;
- ii) industrial facility operations (large and small);
- iii) stationary source control technology;
- iv) assessing the cost/benefit of emission reduction technology;
- v) energy efficiency knowledge and expertise; and

- vi) greenhouse gas knowledge and expertise.

SECTION IV: PROPOSAL SUBMITTAL REQUIREMENTS

Submitted proposals must follow the format outlined below and all requested information must be supplied. Each proposal must be submitted in two parts: 1) Part 1 must relate to the Technical Proposal and 2) Part 2 must relate to the Cost Proposal. Proposal guidelines and requested information are described below.

Signature - All proposals must be signed by an authorized representative of the bidder.

Due Date - The bidder shall submit ten (10) complete copies of the proposal in a sealed envelope, plainly marked in the upper left-hand corner with the name and address of the bidder and the words "Request for Proposals for Greenhouse Gas Mitigation Study." All proposals are due no later than 5:00 p.m., May 17, 2006, and should be directed to:

Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Attention: Alex Ezersky

Late bids/proposals and postmarks will not be accepted. Any correction or resubmission done by the bidder will not extend the submittal due date.

Grounds for Rejection - A proposal may be immediately rejected if:
It is received at any time after the exact date and time set for receipt of proposals;
It is not prepared in the format described; or
It is signed by an individual not authorized to represent the firm.

Disposition of Proposals – The District reserves the right to reject any or all proposals. All responses become the property of District. One copy of the proposal shall be retained for District files. Additional copies and materials will be returned only if requested and at the bidder's expense.

Modification or Withdrawal - Once submitted, proposals cannot be altered without the prior written consent of the District. All proposals shall constitute firm offers and may not be withdrawn for a period of ninety (90) days following the last day to accept proposals.

PART 1 - TECHNICAL PROPOSAL

Cover Letter - Must include the name, address, and telephone number of the contractor, and be signed by the person or persons authorized to represent the firm.

Table of Contents - Clearly identify material contained in the proposal by section and page number.

Firm Contact Information - Provide the following information on the firm:

1. Address and telephone number of office in, or nearest to, San Francisco, California.
2. Name and title of firm's representative designated as contact.
3. Name of contract manager if different from representative designated as contact.

Section A – Preliminary Study Design and Workplan for each Proposal Objective - State overall approach to the study, including the objectives and scope of work to be performed, the sequence of activities, and a description of methodology or techniques to be used. The design and workplan should be prepared in such a manner as to separately distinguish work associated with each task. This design and workplan will be evaluated for responsiveness, comprehensiveness, and demonstration of a clear understanding of the work to be performed as well as an ability to meet all of the objectives, weighted as noted in Section VI, below.

Section B – Program Schedule - Provide projected milestones or benchmarks for issuing reports within the total time allowed.

Section C – Project Organization - Describe the proposed management structure, program monitoring procedures, and organization of the contract team. Specifically address your firm's ability and willingness to commit and maintain staffing, both number and level, to successfully complete the study.

Section D – Qualifications - Describe the technical capabilities of the firm. Provide references of other similar studies performed during the last three years demonstrating an ability to successfully complete the project. Include contact name, title, and telephone number for any references listed. Provide a statement of your firm's background and experience in providing technical consulting services to governmental organizations.

Section E – Assigned Personnel - Provide the following information on the staff to be assigned to the contract:

1. List all key personnel assigned to the project by level and name. Provide a resume or similar statement of the qualifications of the lead person and all persons assigned to the project. Substitution of project manager or lead personnel will not be permitted without prior written approval of the District.
2. Provide a statement of ability to staff the project locally, i.e., the availability of staff in a local office with requisite qualifications and experience.

3. Provide a statement of the education and training of the staff identified for participation in the study, particularly with reference to evaluating the technical feasibility, costs and benefits associated with stationary source control technology.
4. Provide a summary demonstrating the firm's ability to meet required qualifications and fulfill the statement of work, including additional firm personnel and resources beyond those who may be assigned to the project.

Section F – Retention of Working Papers - Include a statement acknowledging that if the firm is awarded a contract, the working papers and related reports will be retained by the contractor for a minimum period of three years.

Section G – Conflict of Interest - Address possible conflicts of interest with other clients affected by actions performed by the firm on behalf of the District. Although the bidder will not be automatically disqualified by reason of work performed for such firms, the District reserves the right to consider the nature and extent of such work in evaluating the proposal.

Section H – Additional Data - Provide other essential data that may assist in the evaluation of this proposal.

PART 2- COST PROPOSAL

Name and Address - The Cost Proposal must list the name and complete address of the bidder in the upper left-hand corner.

Cost Proposal - This RFP is for a fixed price contract not to exceed \$100,000. Cost information must be provided for total cost of performance by each task as described in Section II of this document. In addition, cost information must be supported by a breakdown as listed below:

1. Detail must be provided by the following categories:
 - A) Labor - List the total number of hours and the hourly billing rate for each level of professional staff. Rate quoted must include labor, general, administrative, and overhead costs.
 - B) Subcontractor Costs - List subcontractor costs and identify subcontractors by name. Itemize subcontractor charges per hour or per day.
2. The total price must be clearly indicated at the end of the Cost Proposal.
3. The price to address this RFP shall not exceed \$100,000 (one hundred thousand dollars).

SECTION V: PROPOSAL EVALUATION AND CONTRACTOR SELECTION CRITERIA

- (A) An evaluation panel comprised of representatives from District staff will evaluate all submitted proposals. The panel will make a recommendation for selection of a contractor.

(B) The evaluation will include the following criteria:

1) Technical Criteria: 80 %

Responsiveness of the proposal clearly stating an understanding of the work to be performed and comprehensiveness of the proposal to address the objective: 30

Technical Expertise. Overall experience and innovative solutions and accomplishments of the consulting team: 20

Project Management Staffing: 20

Previous Experience. Past performances of the bidder on work previously done for an air pollution control district or similar governmental agencies: 10

Subtotal – Technical Criteria 80 points

2) Cost Proposal: 20%

Cost proposal 20

Subtotal – Cost 20 points

Total (maximum possible) 100 points

In addition to the above criteria, the District finds it desirable to work with companies engaged in green business practices. Companies are invited to submit information on their green business practices, if any, as part of this proposal.

(C) During the selection process the evaluation panel may wish to interview some bidders for clarification purposes only. No new material will be permitted at this time.

SECTION VI: DRAFT CONTRACT

See Attached.

SECTION VII: EQUAL EMPLOYMENT OPPORTUNITY, MINORITY OR WOMEN-OWNED BUSINESS POLICY

- (A) It is the policy of the District to provide equal opportunities for all persons to be engaged without regard to race, religion, creed, color, national origin, ancestry, disability, medical condition, marital status, gender, age or sexual orientation. It is also District policy to encourage participation by Minority and Women Owned Business Entities in the bidding process.
- (B) To the extent that any conflict exists between this policy and any requirements imposed by federal and state law relating to participation in a contract by a certified MBE/WBE/DVBE as a condition of receipt of federal and state funds, the federal or state requirements shall prevail.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

PROFESSIONAL SERVICES CONTRACT

CONTRACT NO. [year]-[number of contract]

1. **PARTIES** - The parties to this Contract are the Bay Area Air Quality Management District (referred to herein as “DISTRICT”) whose address is 939 Ellis Street, San Francisco, CA 94109, and [name of company or individual] (referred to herein as “CONTRACTOR”) whose address is [address, city, state, zip].
2. **RECITALS**
 - A. DISTRICT is the local agency with primary responsibility for regulating stationary source air pollution in the Bay Area Air Quality Management District in the State of California. DISTRICT is authorized to enter into this Contract under California Health and Safety Code Section 40701. DISTRICT desires to contract with CONTRACTOR for services described in Attachment A - Scope of Work, attached hereto and made a part hereof by this reference. CONTRACTOR attests that it is well-qualified to provide such services on the terms set forth herein. DISTRICT is entering into this Contract based on CONTRACTOR’s expertise.
 - B. All parties to this contract have had the opportunity to have this contract reviewed by their attorney.
3. **PERFORMANCE REQUIREMENTS**
 - A. CONTRACTOR is authorized to do business in the State of California. CONTRACTOR attests that it is in good tax standing with federal and state tax authorities.
 - B. CONTRACTOR agrees to obtain any and all required licenses, permits, and all other appropriate legal authorizations from all applicable federal, state and local jurisdictions and pay all applicable fees.
 - C. CONTRACTOR shall not engage, during the term of this contract, in any performance of work that is in direct or indirect conflict with duties and responsibilities set forth in the Scope of Work attached hereto.
 - D. CONTRACTOR shall be responsible for exercising the degree of skill and care customarily required by accepted professional practices and procedures subject to the DISTRICT’s final approval which the DISTRICT will not unreasonably withhold. Any costs incurred due to the failure to meet the foregoing standards, or to otherwise remedy defective services which require re-performance, as directed by DISTRICT, shall be the responsibility of CONTRACTOR. CONTRACTOR’s failure to achieve the performance goals and objectives stated in Attachment A- Scope of Work, is not a basis for requesting re-performance unless work conducted by CONTRACTOR is deemed by DISTRICT to have failed the foregoing standards of performance.
 - E. CONTRACTOR shall ensure that any subcontractors, employees and agents performing under this CONTRACT shall abide by paragraph D above.
4. **TERM** - The term of this Contract is from [date] to [date], unless further extended by amendment of this Contract in writing, or terminated earlier. No work set forth in this contract shall commence until this contract is fully executed by all parties.
5. **TERMINATION**- In the event any party fails to comply with any term or condition of this Contract, including, but not limited to, the requirements of Attachment A - Scope of Work, or fails to provide the services in the manner agreed upon by the parties, this failure shall constitute a breach of the Contract. The non-breaching party, at its sole discretion, shall have the option of either (1) notifying the breaching party that it must cure this breach or (2) providing written notification of at least 10 business days of its intention to terminate this Contract. Notification shall be provided in the manner set forth in Section 11. The non-breaching party reserves all rights under law and equity to enforce this Contract and recover any damages.

6. INSURANCE

- A. By [date], CONTRACTOR shall furnish evidence to the DISTRICT of workers' compensation insurance for each of its employees in accordance with either California or other applicable statutory requirements.
- B. By [date], CONTRACTOR shall provide evidence of a liability insurance with a combined single limit (general and automotive) of one million dollars (\$1,000,000). DISTRICT shall be named as an additional insured on any such liability policy, and thirty (30)-days prior written notice of cancellation or modification of any such insurance shall be given by CONTRACTOR to DISTRICT. Any such modifications are subject to pre-approval by DISTRICT.
- C. If CONTRACTOR fails to maintain the required insurance coverage set forth above, DISTRICT reserves the right either to purchase such additional insurance and to deduct the cost thereof from any payments owed to CONTRACTOR or terminate this Contract for breach.

7. INDEMNIFICATION - CONTRACTOR agrees to hold harmless, indemnify, and defend DISTRICT, its officers, employees, agents, representatives, and successors-in-interest against any and all loss, damage, cost, or expenses which DISTRICT, its officers, employees, agents, representatives, and successors-in-interest may incur or be required to pay by reason of any injury or property damage caused or incurred by CONTRACTOR, its employees, subcontractors, or agents, in the performance of this Contract.

8. PAYMENT

- A. DISTRICT shall pay CONTRACTOR for work performed under this Contract in accordance with Attachment B - Cost Schedule, attached hereto and incorporated herein by this reference. Payment of such compensation shall be made by DISTRICT to CONTRACTOR within thirty (30) calendar days after approval by DISTRICT of an itemized invoice prepared and furnished by CONTRACTOR showing services performed, referencing tasks as shown in Attachment A – Scope of Work, the hours associated with same, or percentage completion thereof, and the amount of charge claimed.
- B. DISTRICT's payment of invoices shall be subject to the following limitations and requirements:
 - i) Each invoice, including supporting documentation, must be prepared in duplicate on CONTRACTOR's letterhead; must list DISTRICT's contract number, the period covered by the invoice, and the CONTRACTOR's Social Security Number or Federal Employer Identification Number; and must be submitted to: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, Attn: Contracts Manager.
 - ii) Charges for equipment, material, supplies, travel expenses, work of subcontractors, and other charges, as applicable, must be first approved in writing by the District's representative and itemized by CONTRACTOR. DISTRICT shall not pay interest, fees, handling charges, or cost of money on Contract.
- C. DISTRICT shall reimburse CONTRACTOR for travel-related expenses only if such travel is expressly set forth in Attachment A – Scope of Work of this Contract or pre-authorized by DISTRICT in writing.
- D. DISTRICT reserves the right to deduct a percentage of the fees set forth in Attachment B – Cost Schedule when the services described in Attachment A – Scope of Work, are not performed satisfactorily in DISTRICT's sole judgment. The portion so deducted shall be DISTRICT's best estimate of the value of work not performed.
- E. The total amount for which the DISTRICT may be held liable for the performance of work specified in this Contract, including any authorized travel-related expenses, shall not exceed [amount].

9. INTELLECTUAL PROPERTY RIGHTS – Title and full ownership rights to all intellectual property developed under this Contract shall at all times remain with DISTRICT unless otherwise agreed to in writing.

10. DISPUTE RESOLUTION – The parties agree to comply with the following procedures in resolving certain disputes that may arise under this Contract:

- A. Any dispute arising between DISTRICT and CONTRACTOR regarding whether CONTRACTOR has provided services consistent with DISTRICT'S requirements set forth in Attachment A – Scope of Work, shall first be settled by mediation subject to the following requirements:
 - i) Mediation shall be governed by the Commercial Mediation Rules of the American Arbitration Association (“Association”), and the mediator shall be selected by the Association.
 - ii) The party seeking mediation shall provide the other party with a written demand of this request within thirty (15) days of the dispute. Each party shall bear its own costs during the mediation proceedings.
 - iii) The mediation session(s) shall, within thirty (30) days after receipt of the demand for mediation, be held at DISTRICT'S headquarters, or at such other place as may be mutually agreed upon by the parties and mediator, and at such time as is also agreed upon.
 - B. In the event the parties are unable to mediate their dispute, either party may file an action in a court of competent jurisdiction.
 - C. The term of this Contract and the time for performance set forth in Attachment A – Scope of Work shall be extended automatically for the period of time during which the parties are engaged in alternative dispute resolution as set forth in Paragraph A, above.
 - D. The prevailing party in alternative dispute resolution shall be entitled to costs and reasonable attorneys' fees in addition to any other relief to which it may be entitled.
 - E. Maximum recovery under this section shall be limited to [dollar amount equal to value of the contract].
11. NOTICES - Any notices from either party to the other shall be given in writing to the attention of the persons listed below, or to other such addressees as may hereafter be designated in writing for notices by either party to the other. Notice shall be given by certified, express, or registered mail, return receipt requested, and shall be effective as of the date of receipt on the return receipt card.

DISTRICT: Bay Area Air Quality Management District
939 Ellis Street
San Francisco, CA 94109
Attn: [name]

CONTRACTOR: [company or individual name]
[street address]
[city, state, zip]
Attn: [company contact]

12. ADDITIONAL PROVISIONS Any attachment(s) to this Contract contain additional provisions which are expressly incorporated herein by this reference and made a part hereof as though fully set forth at this point.

13. EMPLOYEES OF CONTRACTOR

- A. CONTRACTOR shall assign those employees listed in Attachment B to perform the work specified herein. CONTRACTOR shall not assign different employees to perform this work without the express written permission of DISTRICT, which DISTRICT will not unreasonably withhold.
- B. DISTRICT reserves the right to review the resumes of any of CONTRACTOR's employees selected to perform the work specified herein and to disapprove CONTRACTOR's choices. CONTRACTOR warrants that it will not employ any subcontractor(s) without prior written approval from DISTRICT.
- C. CONTRACTOR shall be responsible for the cost of regular pay to its employees, as well as cost of vacation, vacation replacements, sick leave, severance pay, and pay for legal holidays.
- D. CONTRACTOR, its officers, employees, agents, or representatives shall in no sense be considered employees or agents of DISTRICT, nor shall CONTRACTOR, its officers, employees, agents, or representatives be entitled to or eligible to participate in any benefits, privileges, or plans, given or extended by DISTRICT to its employees.

14. CONFIDENTIALITY - It is expressly understood and agreed that DISTRICT may designate in a conspicuous manner the information which CONTRACTOR obtains from DISTRICT as confidential and CONTRACTOR agrees to:

- A. Observe complete confidentiality with respect to such information, including without limitation, agreeing not to disclose or otherwise permit access to such information by any other person or entity in any manner whatsoever, except that such disclosure or access shall be permitted to employees of CONTRACTOR requiring access in fulfillment of the services provided under this Contract.
- B. Ensure that CONTRACTOR's officers, employees, agents, representatives, and independent contractors are informed of the confidential nature of such information and to assure by agreement or otherwise that they are prohibited from copying or revealing, for any purpose whatsoever, the contents of such information or any part thereof, or from taking any action otherwise prohibited under this paragraph.
- C. Not use such information or any part thereof in the performance of services to others or for the benefit of others in any form whatsoever whether gratuitously or for valuable consideration, except as permitted under this Contract.
- D. Notify DISTRICT promptly and in writing of the circumstances surrounding any possession, use, or knowledge of such information or any part thereof by any person or entity other than those authorized by this paragraph. Take at CONTRACTOR's expense, but at DISTRICT's option and in any event under DISTRICT's control, any legal action necessary to prevent unauthorized use of such information by any third party or entity which has gained access to such information at least in part due to the fault of CONTRACTOR.
- E. Take any and all other actions necessary or desirable to assure such continued confidentiality and protection of such information.
- F. Prevent access to such materials by a person or entity not authorized under this Contract.
- G. Establish specific procedures in order to fulfill the obligations of this paragraph.

15. PUBLICATION

- A. DISTRICT shall have the right of prior written approval of any document which shall be disseminated to the public by CONTRACTOR in which CONTRACTOR utilized information obtained from DISTRICT in connection with performance under this Contract.
- B. Information, data, documents, or reports developed by CONTRACTOR for DISTRICT, pursuant to this Contract, shall be part of DISTRICT'S PUBLIC RECORD unless otherwise indicated. CONTRACTOR may use or publish, at its own expense, such information provided to DISTRICT. The following acknowledgment of support and disclaimer must appear in each publication of materials, whether copyrighted or not, based upon or developed under this Contract.

"This report was prepared as a result of work sponsored, paid for, in whole or in part, by the Bay Area Air Quality Management District (DISTRICT). The opinions, findings, conclusions, and recommendations are those of the author and do not necessarily represent the views of DISTRICT. DISTRICT, its officers, employees, contractors, and subcontractors make no warranty, expressed or implied, and assume no legal liability for the information in this report. DISTRICT has not approved or disapproved this report, nor has DISTRICT passed upon the accuracy or adequacy of the information contained herein."

- C. CONTRACTOR shall inform its officers, employees, and subcontractors involved in the performance of this Contract of the restrictions contained herein and require compliance with the above.

16. NON-DISCRIMINATION - In the performance of this Contract, CONTRACTOR shall not discriminate in recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, color, national origin, ancestry, sex, age, marital status, sexual orientation, medical condition, or physical or mental disability and shall comply with the provisions of the California Fair Employment & Housing Act (Government Code Section 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352) and all

amendments thereto, Executive Order No. 11246 (30 Federal Register 12319), and all administrative rules and regulations issued pursuant to said Acts and Order. CONTRACTOR shall likewise require each subcontractor to comply with this paragraph and shall include in each such subcontract language similar to this paragraph.

17. SOLICITATION OF EMPLOYEES - CONTRACTOR expressly agrees that CONTRACTOR shall not, during the term of this Contract, nor for a period of six months after termination, solicit for employment or employ, whether as an employee or independent contractor, any person who is or has been employed by DISTRICT during the term of this Contract without the consent of DISTRICT. DISTRICT will not hire personnel assigned to DISTRICT under this Contract and CONTRACTOR will not hire DISTRICT'S personnel associated with this Contract during the period of this Contract, any extension to it, and for a period of six months thereafter.
18. PROPERTY AND SECURITY - Without limiting CONTRACTOR'S obligations with regard to security, CONTRACTOR shall comply with all the rules and regulations established by DISTRICT for access to and activity in and around DISTRICT'S premises.
19. ASSIGNMENT - The rights granted hereby may not be assigned, sold, licensed, or otherwise transferred by either party without the prior written consent of the other, and any attempt by either party to do so shall be void upon inception.
20. NON-EFFECT OF WAIVER - The failure of CONTRACTOR or DISTRICT to insist upon the performance of any or all of the terms, covenants, or conditions of this Contract, or failure to exercise any rights or remedies hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, or conditions, or of the future exercise of such rights or remedies, unless otherwise provided for herein.
21. ATTORNEYS' FEES - In the event any action is filed in connection with the enforcement or interpretation of this Contract, each party shall bear its own attorneys' fees and costs.
22. FORCE MAJEURE - Neither DISTRICT nor CONTRACTOR shall be liable or deemed to be in default for any delay or failure in performance under this Contract or interruption of services resulting, directly or indirectly, from acts of God, civil or military authority, acts of public enemy, war, strikes, labor disputes, shortages of suitable parts, materials, labor or transportation, or any similar cause beyond the reasonable control of DISTRICT or CONTRACTOR.
23. SEVERABILITY - In the event that any one or more of the provisions contained in this Contract shall for any reason held to be unenforceable in any respect by a court of competent jurisdiction, such holding shall not affect any provisions of this Contract, and the Contract shall then be construed as if such unenforceable provisions are not a part hereof.
24. HEADINGS - Headings on the paragraphs of this Contract are for convenience and reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Contract.
25. DUPLICATE EXECUTION - This Contract is executed in duplicate. Each signed copy shall have the force and effect of an original.
26. GOVERNING LAW - This Contract shall be construed and interpreted and the legal relations created thereby shall be determined in accordance with the laws of the State of California. Venue for resolution of any disputes under this Contract shall be San Francisco, California.

27. ENTIRE CONTRACT - This Contract represents the entire agreement between the parties hereto related to CONTRACTOR providing services to DISTRICT and there are no understandings, representations, or warranties of any kind except as expressly set forth herein. No waiver, alteration, or modification of any of the provisions herein shall be binding on any party unless in writing and signed by the party against whom enforcement of such waiver, alteration, or modification is sought.

IN WITNESS WHEREOF, the parties to this Contract have caused this Contract to be duly executed on their behalf by their authorized representatives.

BAY AREA AIR QUALITY
MANAGEMENT DISTRICT

[company name]

By: _____
Jack P. Broadbent
Executive Officer/APCO

By: _____
[name]
[title]

Date: _____

Date: _____

Approved as to form:
District Counsel

By: _____
Brian C. Bunger
District Counsel